IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 17-9-2007

Coram

The Honourable Mr.Justice S.J.MUKHOPADHAYA
and
The Honourable Mr.Justice N.PAUL VASANTHAKUMAR

W.A.Nos.154 and 506 of 1998

W.A.No.154 of 1998

1. The Chief Executive Officer,
Tamilnadu Khadi and Village Industries Board,
Madras.

2. The Regional Director,
Khadi and Village Industries Board,
Madras.

3. The Assistant Director
(Khadi and Village Industries)
Tamil Nadu Khadi and Village Industries Board,
Madurai. ... Appellants

Vs.

1. P. Venkataraman

2. The State of Tamil Nadu,
rep.by the Commissioner and
Secretary to Government,
Handlooms, Handicrafts and Khadi Department,
Madras - 9. ... Respondents

W.A.No.506 of 1998
P. Venkataraman ... Appellant

Vs.

1. The State of Tamil Nadu,
rep.by the Commissioner and
Secretary to Government,
Handlooms, Handicrafts and Khadi Department,
Madras - 9.

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2. The Chief Executive Officer,
Tamilnadu Khadi and Village Industries Board,
Kuralagam,
Madras - 108.

3. The Regional Deputy Director,
Khadi and Village Industries Board,
Madras.

4. The Assistant Director
(Khadi and Village Industries)
Tamil Nadu Khadi and Village Industries Board,
Madurai. ... Respondents

Both the Writ Appeals have been preferred under Clause 15 of Letters Patent against the order of the learned single Judge made in W.P.No.21944 of 1993 dated 24.11.1997.

W.P.No.21944 of 1993: Presented this Court under Article 226 of constitution of India to issue a writ of certiorarified mandamus calling for the records of the 1st respondent relating to G.O.(Nilai) No.287 dated 28.10.1992 and order dated 19.12.1989 and the records of the 2nd respondent relating to his proceedings No.Na.Ka.103265/86/E3(1) dated 17.5.1988 and quash the same and direct the respondents to re-instate the petitioner in service with retrospective effect with all attendant benefits.

For Appellants in W.A.154/1998 & RR-2 to 4 in W.A.506/1998 : Mr.S.Packiaraj

For 1st Respondent in W.A.154/1998 & Appellant in W.A.506/1998 : Mr.K.Alagirisamy, Senior Counsel, for Mr.A.Veeraswamy

For 2nd Respondent in W.A.154/1998 & 1st Respondent in W.A.506/1998 : Mr.D.Srinivasan, Addl.Govt.Pleader

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COMMON JUDGMENT

N. PAUL VASANTHAKUMAR, J.

These writ appeals are directed against the order passed by the learned single Judge in W.P.No.21944 of 1993 dated 24.11.1997, allowing the writ petition in part. As against the order setting aside the punishment of dismissal from service and modifying the same to that of compulsory retirement, the Khadi Board has filed W.A.No.154 of 1998. W.A.No.506 of 1998 has been preferred by the writ petitioner against the disallowed portion of the prayer in the writ petition.

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2. For convenience, the parties in this Judgment will be referred to according to their ranks in the writ petition.

3. The writ petitioner was appointed as Grade-III Assistant in the Tamil Nadu Khadi Department on 1.6.1959 and he was promoted as Grade-II Assistant/Manager from 3.4.1977. In the year 1986 when he was working at Narikalpatti, he was placed under suspension by order dated 26.9.1986 by the Assistant Director, Khadi and Village Industries Board, Dindigul. Thereafter 4th respondent issued charge memo on 31.12.1986 framing the following two charges:

> "i) When the petitioner was working as Manager of Bodinayakanur Matressess Unit, he altered the stock figures of the year 1984-85 carried forward to the year 1985-86, after the inspection of Auditors, with intend to cheat the Board Officials.
>
> ii) The petitioner misappropriated a sum of Rs.42,104/- by correcting the figures registered by Auditors and handing over the stock."

For the said charges explanation from the writ petitioner was sought. After prolonged correspondence, writ petitioner filed explanation on 11.12.1987. Not satisfied with the explanation, an enquiry was conducted and the 4th respondent submitted the enquiry report on 21.12.1987 to the second respondent stating that the charges levelled against the writ petitioner were proved. The 4th respondent, by separate order dated 18.12.1987 directed recovery of the deficit amount of Rs.42,104/- from the writ petitioner and the amount of recovery was modified by order dated 4.3.1988 reducing the amount of recovery to Rs.35,294.85. On 17.5.1988, the second respondent dismissed the petitioner from service and the said order was challenged in appeal before the first respondent on 18.7.1988 as per regulation 39 of the Madras State Khadi and Village Industries Board Service Regulations, 1966. The appeal was dismissed by the first respondent on 19.12.1989 and thereafter the writ petitioner filed mercy petition on 25.5.1990, which was also dismissed in G.O.Ms.No.289, dated 28.10.1992. The appeal and mercy petition having been dismissed, the writ petitioner challenged the order of dismissal, confirmed in appeal and mercy petition in W.P.No.21944 of 1993 by contending that he was not given reasonable opportunity of hearing as no statement was recorded in his presence during the enquiry; enquiry report was furnished only along with the order of dismissal; and that the appellate authority also has not followed the procedures contemplated under Regulation 39, while passing orders in the appeal.

4. The respondents filed counter affidavit in the writ petition contending that the writ petitioner, while working as Khadi Assistant Grade-II/Manager, Bodinaikanur Quilt Unit during 1984-85 and 1985-86, he has not maintained the stock register properly and during audit the stocks were checked on 12.4.1985 and audit authorities have also signed in the

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stock register. The said entries were altered by the writ petitioner by altering the Matress cover stocks available from 1515 to 1335 i.e., less by 180 Matressess Covers. On 14.7.1985 the writ petitioner handed over the charges of stock to one Periyasamy and at that time he has handed over 65 numbers lesser than the one mentioned in the altered figure. Thus there was shortage of 180+65=245 matress covers and its value at that time @ Rs.147.20 per matress cover works out to Rs.36,064/-. Similarly, for the year 1985-86, the audit was held on 13.4.1986 and it was recorded in the stock register that the lining cloth available was 3445.20 metres and the same was altered by the writ petitioner as 3045.20 metres, showing the stock less by 400 metres. The value of 400 metres lining cloth @ Rs.15.10 worked out to Rs.6,040/-. Thus, the writ petitioner is liable to pay a sum of Rs.42,104/- towards shortage of the above two materials. The writ petitioner involved in malpractice of altering the records and fabrication of records and therefore there was a huge shortfall and hence he was suspended pending contemplation of enquiry for the above two charges. In the explanation, the writ petitioner submitted that the shortage may be while transporting the goods to Dindigul. It is also stated in the counter affidavit that the writ petitioner admitted the alteration of entries in his explanation and during personal hearing. In the explanation he has stated that shortage would be about Rs.15,000/- and not Rs.42,104/-. Even assuming that the articles were lost during transit (shifting) writ petitioner being the custodian of the articles, he alone is responsible for the lost articles. In the counter affidavit it is further stated that the writ petitioner having admitted the shortages and the recovery order having become final based on the proved charges of tampering of records and misappropriation, the writ petitioner was dismissed from service. It is further stated that the writ petitioner is having 11 previous punishments such as stoppage of increments for 7 times and Censure for 4 times. Pointing out all these, the respondents prayed for dismissal of the writ petition.

5. The learned single Judge, considering the rival contentions found that there was no procedural violations in the conduct of enquiry. However, the learned single Judge interfered with the order of punishment by holding that the punishment of dismissal from the service is disproportionate for the proved charges and modified the punishment to that of compulsory retirement from the date of the order of dismissal with all monetary benefits with a direction to quantify the amount and pay the same within sixty days from the date of receipt of the order.

6. The said order of the learned Judge is challenged by the Khadi Board in W.A.No.154 of 1998 insofar as altering the punishment to that of compulsory retirement. On the other hand, the writ petitioner, not satisfied with the order of the learned single Judge, filed W.A.No.506 of 1998 for reinstatement with all consequential benefits.

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7. The learned counsel appearing for the respondents/Khadi Board, who are appellants in W.A.No.154 of 1998, contended that the writ petitioner, having accepted the guilt partly through his reply and the recovery order having been accepted by the writ petitioner, he is not entitled to contend that there is procedural violations during the course of the enquiry and the charges being alteration of stock register and misappropriation of Khadi Board funds, the petitioner lost confidence of the Board and therefore the disciplinary authority passed the order of dismissal from service, which was confirmed in appeal by the first respondent and the mercy petition was also dismissed. Learned counsel further submitted that the learned single Judge was not right in modifying the punishment, particularly when the misappropriation is proved and after giving a finding that there is no procedural violation. The learned counsel also cited the decision of the Supreme Court reported in (2003) 3 SCC 605 (Regional Manager, U.P.SRTC v. Hoti Lal) in support of his contentions.

8. The learned Senior Counsel appearing for the writ petitioner, who is appellant in W.A.No.506 of 1998 and first respondent in W.A.No.154 of 1998 submitted that the statements were not recorded in the presence of the writ petitioner by the Enquiry Officer and no opportunity with regard to the proposed penalty was given to the petitioner after completion of the enquiry and as such there is violation of service regulations, particularly regulation 34(b)(i)&(ii). The learned Senior Counsel further submitted that in the reply given, the writ petitioner agreed in part with regard to the deficiency in stock, was given only for the purpose of replying to the show cause notice for the recovery and the same cannot be treated as admission of the guilt by the writ petitioner. The learned Senior Counsel also cited the decisions reported in 1963 (II) LLJ 392 (Meenglas Tea Estate v. Its Workmen); 1963 (II) LLJ 396A (Associated Cement Companies Ltd. v. Their Workmen and another); 1970 (II) LLJ 533 (Hindusthan Steel Ltd. v. Rourkela Mazdoor Sabha and others); ILR (1998) 3 Madras 420 (Kancheepuram Central Co-Operative Bank Ltd. v. The Deputy Commissioner of Labour (Appeals), Madras); (1986) 2 SCC 651 (R.P.Bhatt v. Union of India) and the Division Bench Judgment of this Court in W.A.No.1150 of 1996 dated 29.4.1998 (K.Gopinathan v. Tamil Nadu Small Industries Corporation Ltd. and another) in support of his contentions.

9. We have considered the rival submissions made by the learned senior Counsel appearing for the writ petitioner as well as the learned counsels appearing for the respective respondents.

10. The charges framed against the writ petitioner are that he acted in breach of Trust for the purpose of cheating the Board Officials by making corrections in the entries in the register and he has committed misappropriation of the property of the Board worth Rs.42,104/- by correcting the entries made by the Auditors, while handing over the stocks. The Board called for explanation for the charge memo dated

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31.12.1986, for which the writ petitioner submitted his explanation on 11.12.1987, wherein he has stated as follows,

> "..... the alleged shortage against me would come to Rs.16,000/- only as net shortage, as I being the stock keeper, the shortage amount may be adjusted from and out of my salary in case if any order is passed for recovery of the said amount.
>
> I can prove myself on the basis of the documentary evidence at the office of the Asst. Director, Madurai, that the shortage amount is only Rs.15000/- instead of Rs.42104/- as shortage as alleged against me. ....."

From the perusal of the above explanation, we could see that the writ petitioner has accepted the shortage in stocks and he had requested the respondents to adjust the amount due to the shortage of stocks from his salary, though the quantum is disputed as Rs.16,000/- instead of Rs.42,104/-.

11. The contention of the writ petitioner that he has accepted the charges in part only against recovery proceedings, has no substance as both the proceedings arose due to alteration of stock register and misappropriation and the admission cannot be for one proceeding when the allegations are common in both the proceedings.

12. The respondents have not accepted the said explanation and ordered recovery against the shortage, which clearly establishes the acceptance of the guilt by the writ petitioner. The Khadi Board thereafter conducted enquiry and during the enquiry also it was found that the charges were proved. Based on the proven charges of correction of stock register and misappropriation of Khadi Board funds, the Disciplinary Authority lost the confidence against the petitioner and therefore decided to impose the punishment of dismissal from service. The appellate authority also confirmed the order of dismissal and gave a finding that all the procedures prescribed for conducting enquiry were fully followed and the writ petitioner having misappropriated the amount of Khadi Board, the punishment imposed was fully justified. The mercy petition filed by the writ petitioner before the Government was also considered and taking note of the acceptance of the guilt and remittance of the amount ordered to be recovered, the Government dismissed the same.

13. In the light of the explanation submitted by the writ petitioner, enquiry report, order of the disciplinary authority, order of the appellate authority, and the order passed in the mercy petition, we are of the view that the charges framed against the writ petitioner are fully proved and the writ petitioner was given every opportunity to defend his case and there is no violation of principles of natural justice in this case.

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14. The contention of the learned Senior Counsel appearing for the writ petitioner that as per the decisions reported in 1963 (II) LLJ 392 (Meenglas Tea Estate v. Its Workmen); 1963 (II) LLJ 396A (Associated Cement Companies Ltd. v. Their Workmen and another); 1970 (II) LLJ 533 (Hindusthan Steel Ltd. v. Rourkela Mazdoor Sabha and others); ILR (1998) 3 Madras 420 (Kancheepuram Central Co-Operative Bank Ltd. v. The Deputy Commissioner of Labour (Appeals), Madras); (1986) 2 SCC 651 (R.P.Bhatt v. Union of India) and the Division Bench Judgment of this Court in W.A.No.1150 of 1996 dated 29.4.1998 (K.Gopinathan v. Tamil Nadu Small Industries Corporation Ltd. and another), the procedures to be followed while conducting domestic enquiry were not followed, cannot be accepted in view of the facts in this case that the writ petitioner had accepted the guilt in his explanation given to the charge memo and not challenged the order of recovery.

15. The learned single Judge also found that the procedures to be followed while conducting enquiry were followed by the Enquiry Officer and confirmed the findings with regard to the same. However, the learned single Judge interfered with the punishment imposed on the ground of proportionality. The charges of misappropriation and breach of Trust and cheating the Board Officials by making correction in the entries in the stock register shall be treated as major misconduct on the part of the writ petitioner and the respondents having found that the said charges are proved, imposed the punishment of dismissal and the same cannot be treated as disproportionate to the gravity of the charges.

16. (a) In J.T. (1996) 3 SC 96 (Municipal Committee, Bahadurgarh v. Krishnan Behari and Others), the Supreme Court held that in cases of misappropriation, there cannot be any other punishment other than dismissal. It is further held that any sympathy shown in such cases is totally uncalled for and opposed to public interest and that the amount misappropriated may be small or large, but it is the act of misappropriation that is relevant.

(b) Imposing punishment is the discretion of the Disciplinary Authority and the High Court cannot interfere with the said discretion as held by the Supreme Court in AIR 1997 SC 3387 (Union of India v. G.Ganayutham). In paragraph 28 of the Judgment the Supreme Court held as under,

> "The current position of proportionality in administrative law in England and India can be summarised as follows:-

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(1) To judge the validity of any administrative order or statutory discretion, normally the Wednesbury test is to be applied to find out if the decision was illegal or suffered from procedural improprieties or was one which no sensible decision-maker could, on the material before him and within the framework of the law, have arrived at. The Court would consider whether relevant matters had not been taken into account or whether irrelevant matters had been taken into account or whether the action was not bona fide. The Court would also consider whether the decision was absurd or perverse. The Court would not however go into the correctness of the choice made by the administrator amongst the various alternatives open to him. Nor could the Court substitute its decision to that of the administrator. This is the Wednesbury test.

(2) The Court would not interfere with the administrator's decision unless it was illegal or suffered from procedural impropriety or was irrational in the sense that it was in outrageous defiance of logic or moral standards. The possibility of other tests, including proportionality being brought into English Administrative Law in future is not ruled out. These are the CCSU principles.

(3)(a) As per Bugdaycay, Brind and Smith, as long as the Convention is not incorporated into English Law, the English Courts merely exercise a secondary judgment to find out if the decision maker could have, on the material before him, arrived at the primary judgment in the manner he has done.

(3)(b) If the Convention is incorporated in England making available in principle of proportionality, then the English Courts will render primary judgment on the validity of the administrative action and find out if the restriction is disproportionate or excessive or is not based upon a fair balancing of the fundamental freedom and the need for the restriction thereupon.

(4)(a) The position in our country, in administrative law, where no fundamental freedoms as aforesaid are involved, is that the Courts/Tribunals will only play a secondary role while the primary judgment as to reasonableness will remain with the executive or administrative authority. The secondary

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judgment of the Court is to be based on Wednesbury and CCSU principles as stated by Lord Greene and Lord Diplock respectively to find if the executive or administrative authority has reasonably arrived at his decision as the primary authority.

(4)(b) Whether in the case of administrative or executive action affecting fundamental freedoms, the Courts in our country will apply the principle of 'proportionality' and assume a primary role, if left open, to be decided in an appropriate case where such action is alleged to offend fundamental freedoms. It will be then necessary to decide whether the Courts will have a primary role only if the freedoms under Articles 19, 21 etc., are involved and not for Article 14."

In the said Judgment, the Supreme Court referred its earlier decisions reported in (1997) 3 SCC 72 = JT 1997 (2) SC 367 (Indian Oil Corporation Ltd & Another v. Ashok Kumar Arora) and (1995) 6 SCC 749 = JT 1995 (8) SC 65 (B.C.Chaturvedi v. Union of India and Others). In the case of B.C.Chaturvedi, in paragraph 18, the Supreme Court held as under,

"A review of the above legal position would establish that the disciplinary authority, and on appeal the appellate authority, being fact-finding authorities have exclusive power to consider the evidence with a view to maintain discipline. They are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. The High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief, either directing the disciplinary/ appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof."

(c) In AIR 2000 SC 3129 (Janatha Bazar v. Secretary, Sahakari Noukarara Singh), it is held that once the act of misappropriation is proved, may be for a small or large amount, there is no question of showing uncalled for sympathy and reinstalling the employee in service.

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(d) In (2003) 3 SCC 605 (Regional Manager, U.P.SRTC v. Hoti Lal), in paragraph 10 the Supreme Court held thus,

> "It needs to be emphasized that the court or tribunal while dealing with the quantum of punishment has to record reasons as to why it is felt that the punishment was not commensurate with the proved charges. As has been highlighted in several cases to which reference has been made above, the scope for interference is very limited and restricted to exceptional cases in the indicated circumstances. Unfortunately, in the present case as the quoted extracts of the High Court's order would go to show, no reasons whatsoever have been indicated as to why the punishment was considered disproportionate. Reasons are live links between the mind of the decision taken to the controversy in question and the decision or conclusion arrived at. Failure to give reasons amounts to denial of justice (See Alexander Machinery (Dudley) Ltd. v. Crabtree (1974 LCR 120 (NIRC)). A mere statement that it is disproportionate would not suffice. A party appearing before a court, as to what it is that the court is addressing its mind. It is not only the amount involved but the mental set-up, the type of duty performed and similar relevant circumstances which go into the decision-making process while considering whether the punishment is proportionate or disproportionate. If the charged employee holds a position of trust where honesty and integrity are inbuilt requirements of functioning, it would not be proper to deal with the matter leniently. Misconduct in such cases has to be dealt with iron hands. Where the person deals with public money or is engaged in financial transactions or acts in a fiduciary capacity, the highest degree of integrity and trustworthiness is a must and unexceptionable. Judged in that background, conclusions of the Division Bench of the High Court do not appear to be proper. We set aside the same and restore order of the learned Singe Judge upholding the order of dismissal."

(e) In the decision reported in (2005) 7 SCC 338 (V.Ramana v. A.P.SRTC), the Supreme Court in paragraph 11 held as under,

> "The common thread running through in all these decisions is that the court should not interfere with the administrator's decision unless it was illogical or suffers from procedural impropriety or was shocking to the conscience of the court, in the sense that it was in defiance of logic or moral standards. In view of

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what has been stated in Wednesbury case ((1948) 1 KB 223) the court would not go into the correctness of the choice made by the administrator open to him and the court should not substitute its decision for that of the administrator. The scope of judicial review is limited to the deficiency in decision-making process and not the decision."

(f) The Honourable Supreme Court, in the decision reported in (2006) 3 SCC 143 (Bharat Petroleum Corporation Ltd. v. T.K.Raju) in paragraph 16 held that the power of judicial review in the matter of quantum of punishment awarded by the Labour Court is very limited and the same shall not be done in a routine manner. The relevant portion reads thus,

"The power of judicial review in such matters is limited. This Court times without number had laid down that interference with the quantum of punishment should not be done in a routine manner."

(g) The Supreme Court in the decision reported in (2006) 1 SCC 63 (Karnataka Bank Ltd. v. A.L.Mohan Rao) in paragraph 6 held as follows:

"..... It is not for the courts to interfere in cases of gross misconduct of this nature with the decision of the disciplinary authority so long as the inquiry has been fair and proper and misconduct proved. In such matters, it is for the disciplinary authority to decide what is the fit punishment. In any case on such a misconduct, it could never have been said that termination of service is not the appropriate punishment."

The above decision of the Supreme Court was followed by us in W.A.No.1062 of 2007 dated 6.9.2007 (M.Gunaseelan v. The Presiding Officer, Principal Labour Court, Chennai & Another), wherein we have confirmed the decision of the Labour Court refusing reinstatement.

(h) In the recent decision reported in 2007 AIR SCW 4136 = JT 2007 (8) SC 588 (Ramesh Chandra Sharma v. Punjab National Bank & Another), in paragraph 20, the Supreme Court held thus,

"The High Court itself has noticed a large number of decisions and formed the opinion that the charges levelled against the delinquent officer were of grave nature. A major punishment may be inflicted even where no pecuniary loss was caused to the Bank by reason of the act of the delinquent officer. In support of the aforementioned proposition of law, the High Court opined:

"The charges levelled against the petitioner, which were found proved upon enquiry, are quite serious in nature. The petitioner had engaged himself in reckless lending causing huge financial loss to the Bank to the extent of Rs.1,14,87,164.76. It also shows that the petitioner had disbursed loan through middlemen and demanded and received illegal

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gratification from a borrower. We are of the considered opinion that in such cases, the officers of the Bank should not be permitted to continue in service at all.

Once the employer has lost the confidence in the employee and the bona fide loss of confidence is affirmed, the order of punishment must be considered to be immune from challenge, for the reason that discharging the office of trust and confidence requires absolute integrity. A necessary implication which must be engrafted on the contract of service is that the servant must undertake to serve his master with good faith and fidelity. In a case of loss of confidence, reinstatement cannot be directed. Granting such an employee the relief of reinstatement would be "an act of misplaced sympathy which can find no foundation in law or in equity." (Vide Air India Corporation, Bombay vs. V.A.Ravellow, AIR 1972 SC 1343; The Binny Ltd. vs. Their Workmen, AIR 1973 SC 1403; Kamal Kishore Lakshman vs. Management of M/s.Pan American World Airways Inc & Ors., AIR 1987 SC 229; Francis Kalein & Co. Pvt. Ltd., vs. Their Workmen, AIR 1971 SC 2414; Regional Manager, Rajasthan SRTC Vs. Sohan Lal, (2004) 8 SCC 218; and Bharat Heavy Electricals Ltd. Vs. M.Chandrashekhar Reddy & Ors., 2005 AIR SCW 1232).

In Kanhaiyalal Agrawal & Ors. Vs. Factory Manager, Gwaliar Sugar Co. Ltd. (2001) 9 SCC 609, the Hon'ble Supreme Court laid down the test for loss of confidence to find out as to whether there was bona fide loss of confidence in the employee, observing that, (i) the workman is holding the position of trust and confidence; (ii) by abusing such position, he commits act which results in forfeiting the same; and (iii) to continue him in service/establishment would be embarrassing and inconvenient to the employer, or would be detrimental to the discipline or security of the establishment. Loss of confidence cannot be subjective, based upon the mind of the management. Objective facts which would lead to a definite inference of apprehension in the mind of the management, regarding trustworthiness or reliability of the employee, must be alleged and proved." "

(i) A Division Bench of this Court in the decision reported in (2005) 3 M.L.J. 375 (The Management of Hindustan Teleprinters Employees Co-operative Thrift and Credit Society Limited v. The Presiding Officer, Principal Labour Court) in paragraph 14 held that in case of misappropriation, whether, of small amount or large amount, the only punishment which can be given is dismissal.

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17. The contention of the writ petitioner that before imposing the penalty the writ petitioner was not put on notice in terms of Regulation 34(b)(ii) cannot be sustained in view of Regulation 34(b)(i), wherein it is stated that at the time of oral enquiry oral evidence shall be heard as to such of the allegations as are not admitted. Here, the writ petitioner admitted the second charge of misappropriation and hence he need not be heard before the punishment was imposed. The appellate authority also considered the nature of two charges, the misappropriation of amount proved during the enquiry and also found that the punishment cannot be treated as excessive, having regard to the nature of the charges, particularly misappropriation. Hence we are of the view that the appellate authority also complied with Regulation 39 of the Madras State Khadi and Village Industries Board Service Regulations, 1966. Service Regulation 49 states that the Government Servants' Conduct Rules as amended from time to time shall apply mutatis mutandis to the members of the Board service also. Rule 20 of the Tamil Nadu Government Servants' Conduct Rules, 1973, deal with integrity and devotion to duty. Rule 20(1) reads as follows:

> "Every member of the service shall at all times maintain absolute integrity and devotion to duty and shall do nothing which is unbecoming of a member of the service."

The writ petitioner, by indulging in the above misconducts, violated the said conduct rule also.

18. In the light of the above cited decisions and having regard to the nature of the charges and acceptance of the misappropriation by the writ petitioner, we find that the second respondent is justified in dismissing the writ petitioner from service and the appellate authority is right in confirming the said order. We also hold that the order of the learned single Judge in modifying the punishment to that of compulsory retirement is uncalled for in the facts and circumstances of this case.

19. In the result, the order of the learned single Judge in modifying the punishment is set aside and the writ petition is dismissed. W.A.No.154 of 1998 is allowed and W.A.No.506 of 1998 is dismissed. There will be no order as to costs.

vr

Sd/-
Asst.Registrar

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Sub Asst.Registrar

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To

1. The Commissioner and Secretary to Government,
   Handlooms, Handicrafts and Khadi Department,
   Madras - 9.

2. The Chief Executive Officer,
   Tamilnadu Khadi and Village Industries Board,
   Madras - 108.

3. The Regional Deputy Director,
   Khadi and Village Industries Board,
   Madras.

4. The Assistant Director (Khadi and Village Industries)
   Tamil Nadu Khadi and Village Industries Board,
   Madurai.

+1 cc to Mr.P.Arivudainambi, Advocate Sr.No.57974.

+1 cc to the Government Pleader Sr.No.57887.

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